



Ian Cross <ian@lawinannarbor.com>

Tehum (23-90086) - Debtor's initial objection to Trustee Motion

Aaron Kaufman <akaufman@grayreed.com>

Fri, Aug 11, 2023 at 4:54 PM

To: Ian Cross <ian@lawinannarbor.com>

Cc: "Blake.m@carsoncoil.com" <Blake.m@carsoncoil.com>, "jjp@walkerandpatterson.com" <jjp@walkerandpatterson.com>, "thackney@hodlawyers.com" <thackney@hodlawyers.com>, "meheard@heardlawfirm.net" <meheard@heardlawfirm.net>, "lrifkin@rifkinlawoffice.com" <lrifkin@rifkinlawoffice.com>, Amy Whelan <AWhelan@nclrights.org>, TehumBK <tehumbk@grayreed.com>, "Nicholas Zluticky (nicholas.zluticky@stinson.com)" <nicholas.zluticky@stinson.com>, "Zachary H. Hemenway - Stinson LLP (zachary.hemenway@stinson.com)" <zachary.hemenway@stinson.com>

Ian –

While I appreciate the “FYI” given below, this is the first you’ve noticed the Debtor regarding the movants’ intentions to take three significant depositions in support of the trustee motion. I have already explained to you (more than once) that the week of 8/28 is not available to any of the Debtor’s professionals working on this matter. It is surprising to us that you would try to schedule depositions that week knowing this. We would insist that you find another week to allow the Debtor to participate in these depositions.

If you would like to schedule those three depositions for the following week and reschedule the 9/5 hearing on your motion, this will allow the parties sufficient time to take the depositions on fair notice. We are happy to work with you on this. Given the extreme remedy you are seeking, and the timing of your motion several months into the case, we respectfully dispute the existence of any real urgency warranting the need to schedule these depositions as you are proposing to do. We reserve the right to cross notice the deponents and would also reserve the right to object to the admissibility of any depositions at the hearing.

Please also accept this e-mail as the Debtor’s request to depose any other witnesses that you intend to use in support of your motion.

Regarding Monday’s deposition link, you should contact Committee counsel. The Debtor does not object to your attendance as “listen only” as discussed.

Regarding Ankura’s EL, please see attached. The omission was inadvertent. We did not realize this until the UST requested it from us in June, and we provided it to them upon their request.

I look forward to hearing back from you on the scheduling of these depositions. Happy to schedule a conference with your group and the committee if you think that would be more productive and efficient.

Regards,

amk

From: Ian Cross <ian@lawinannarbor.com>

Sent: Friday, August 11, 2023 2:37 PM

To: Aaron Kaufman <akaufman@grayreed.com>

Cc: Blake.m@carsoncoil.com; jjp@walkerandpatterson.com; thackney@hodlawyers.com; meheard@heardlawfirm.net; lrifkin@rifkinlawoffice.com; Amy Whelan <AWhelan@nclrights.org>; TehumBK <tehumbk@grayreed.com>; Nicholas Zluticky (nicholas.zluticky@stinson.com) <nicholas.zluticky@stinson.com>; Zachary H. Hemenway - Stinson LLP (zachary.hemenway@stinson.com) <zachary.hemenway@stinson.com>

Subject: Re: [EXTERNAL] Re: Tehum (23-90086) - Debtor's initial objection to Trustee Motion

Hi Aaron,

FYI, I plan on taking depositions of James Hyman, Ronald Chapman, Sr., and David Gefner the week of August 28th, and admitting portions of the depositions into evidence at the trustee motion hearing under FRCP 32(a)(4)(B). We will have to make that week work because it is the only time that is after the mediation and before the hearing. Let me know if you have any evidentiary objections to that procedure.

I would also like to watch the 30(b)(6) deps of Geneva, Perigrove 1018, and Pharmacorr, like we did at the M2 LoanCo dep. I do not need to question the witnesses. Please send me the zoom links and times those depositions are taking place.

Also, I would like you to send me the Engagement Agreement between the debtor and Ankura. In the application to retain Ankura (Doc. 188) it says that there is an Engagement Agreement "between the Debtor and Ankura, a copy of which is attached to the Order as Exhibit 1." but I cannot find Exhibit 1 on either the application, the proposed order (Doc. 188-1) or the signed order (Doc. 340).

Thanks,

Ian

On Tue, Aug 1, 2023 at 12:34 PM Aaron Kaufman <akaufman@grayreed.com> wrote:

Ian –

Thank you for reaching out. The Committee has requested Rule 2004s of certain non-debtor entities. The debtor has not agreed to Rule 2004 depositions at this time, but we have been working with counsel for others (Perigrove, Geneva, etc.) to facilitate an agreed set of narrowed topics to aid discussions at mediation in the next few weeks.

Given that you now have a pending motion that gives rise to a contested matter, we suggest you consult the rules for contested matters and work with us on dates for separate depositions under those rules. As we sit here today, there is no hearing set on your trustee motion and Judge Lopez has instructed us to keep our focus on mediation. If you would like to revisit this after mediation, we would be happy to schedule a time to confer on such discovery.

Regards,

amk

From: Ian Cross <ian@lawinannarbor.com>

Sent: Tuesday, August 1, 2023 11:10 AM

To: Aaron Kaufman <akaufman@grayreed.com>

Cc: Blake.m@carsoncoil.com; jjp@walkerandpatterson.com; thackney@hodlawyers.com; meheard@heardlawfirm.net; lrifkin@rifkinlawoffice.com; Amy Whelan <AWhelan@nclrights.org>; TehumBK <tehumbk@grayreed.com>; Nicholas Zluticky (nicholas.zluticky@stinson.com)

<nicholas.zluticky@stinson.com>; Zachary H. Hemenway - Stinson LLP (zachary.hemenway@stinson.com) <zachary.hemenway@stinson.com>

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Aaron,

As you suggested in the last two 341s, I would like to take 2004 depositions of Lefkowitz and Gefner. I think the easiest way to do this will be to conduct them on the same days that the committee is deposing those individuals. Depending on what the committee asks, I may not have that many additional questions. Let me know your thoughts on dates/timing.

Thanks,

Ian

On Fri, Jul 28, 2023 at 6:28 PM Aaron Kaufman <akaufman@grayreed.com> wrote:

Ian, Blake, Johnny, Thomas, M.E., Lori and Amy –

Please see the attached courtesy copy of the Debtor's initial objection to the motion to appoint a ch 11 trustee (dkt 731), filed in the above referenced case. I'm e-mailing you because you each appear on the signature blocks at the end of the motion. Please share this document with the other parties who you've listed as movants in your motion (I do not have all of their addresses handy, though KCC will be serving them formally).

Have a great weekend.

-amk

Aaron Kaufman

Partner

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2 attachments



